Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	
Compensation Regime	)	CC Docket No. 01-92
	)	
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REPLY COMMENTS OF BROADVIEW NETWORKS, NUVOX COMMUNICATIONS, ONE COMMUNICATIONS CORP., AND XO COMMUNICATIONS LLC ON THE MISSOULA PLAN

BROADVIEW NETWORKS
NUVOX COMMUNICATIONS
ONE COMMUNICATIONS CORP.
XO COMMUNICATIONS LLC

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Summary

In their initial comments, Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications LLC (the "Joint CLEC Commenters") argued that the Missoula Plan ("Plan") would cause considerable harm to end users, competition, and the economy generally, and, therefore, should be rejected. The views of the Joint CLEC Commenters were echoed and amplified upon by a wide array of other commenting parties, including States, consumer advocates, and providers from all sectors of the telecommunications industry. The amount and intensity of opposition to the Plan was not surprising given its bewildering complexity, unbalanced policy proposals, and certain illegality. In contrast, the Plan received scant support beyond its authors (AT&T-related and rural ILEC interests).

The Joint CLEC Commenters believe the Plan is deeply flawed for many reasons, including:

> By including "make-whole" provisions for the supporters of the Plan, it will produce a windfall for a narrow group of telecommunications providers at the expense of consumers and other providers .
>
> By overturning existing local interconnection agreements, it will undermine basic and well-established interconnection rights and harm competition.
>
> By failing to unify intercarrier compensation rates, it will foster additional arbitrage opportunities.
>
> By arbitrarily imposing excessive transit rates, it will harm competition.

In addition, the Plan is illegal as it seeks to improperly preempt state authority in regard to intrastate services and local interconnection agreements.

The Commission should reject the Plan in its entirety. Instead, it can address any current concerns by taking measured steps clarifying and strengthening the call signaling rules

and by resolving the regulatory status of VOIP traffic. In addition, it should encourage intercarrier negotiations as a means to address additional issues.

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Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications LLC (collectively, the "Joint CLEC Commenters") hereby reply to the initial round of comments on the Missoula Plan (the "Plan") pursuant to the extensions granted by the Commission to interested parties.[1] The initial comments on the Plan were rife with opposition from State commissions, end user advocates, and all segments of the telecommunications industry. If there had been any doubt, the record makes clear that the Plan is illegal and unsound as a matter of public policy. As the Joint CLEC Commenters argued in their initial comments, the Plan would cause considerable harms to end users and the economy generally. The Plan should be rejected in its entirety.

Nonetheless, certain reforms are necessary. As stated in the Joint CLEC Commenters' initial comments, and echoed by other parties, the Commission should take measured steps to address most of the concerns that motivated the Missoula Plan in the

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1 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Order, DA 06-2339 (rel. Nov. 20, 2006); Order, DA 06-2577 (rel. Dec. 22, 2006).

first place: clarify and strengthen the call signaling rules and resolve the regulatory status of voice over Internet Protocol ("VoIP") traffic, including the intercarrier compensation framework that applies to such traffic. The Commission should strongly encourage intercarrier negotiations as the means to address additional issues. Once these measures are implemented, the Commission should continue to monitor how the industry is addressing intercarrier compensation issues to determine what, if any, work remains to be done by the Commission.

I. INTRODUCTION

The Missoula Plan has generated widespread opposition befitting such a bewilderingly complex and blatantly unbalanced proposal. Parties from all sectors of the telecommunications industry perceived the Plan as destabilizing and a vehicle that would harm residential and business end users and undermine the continued development of competition. The Plan generated scant support beyond those AT&T-related and rural ILEC interests that submitted the Plan in the first place. Given the record, it would be premature and unwise to adopt the Plan before understanding the size, nature, and severity of the issues to be addressed. It is simply untrue, as the Plan's Supporters' ("Supporters") suggest, that intercarrier compensation cannot be materially improved unless the Commission does not step in and change everything. As one commenter succinctly summed up the dangers of the Plan, "A mandate for significant shifts in rates will alter the ability of companies to assess their financial future, to plan their operations and business relationships, and to invest in maintaining and expanding their networks."[2]

2 Comments of SureWest at 5.

The Supporters continue to maintain that the Missoula Plan must be adopted in its entirety if a sound approach to intercarrier compensation is to be achieved.[3] As discussed herein, the Supporters' have not made their case that central components of the Plan are legal, let alone that the Plan advances any public interest objectives. Rather than adopting the Plan wholesale, the Commission should reject it in like manner and instead focus on select areas of policy reform.

Notably, State regulators consistently found much fault with the Plan. Not one of the twenty-five States that filed comments support the Plan as written. Many States joined competitive carriers and challenged the Plan's usurpation of the States' jurisdiction and roles in the area of intercarrier compensation, including intrastate access charges. That several States, including Missouri, Ohio, and Texas, submitted detailed analyses of the Plan's illegalities makes it a virtual certainty that adoption of the Plan would face fierce legal challenges in the federal courts.

Consumer advocates and many other commenters were equally as critical in their comments on the Plan. The National Association of State Utility Consumer Advocates stated that the Plan should be rejected "*in toto*" for a number of reasons, including it ensures ILECs are "made whole, while the entire burden or reducing ICC rates ultimately falls on end users," increases the universal service funding requirements in a way that is "unsustainable and unreasonable," and requires an illegal preemption of state authority.[4] Among telecommunications providers -- ILECs, CLECs, wireless

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3 Comments of the Supporters of the Missoula Plan at 6.

4 Comments of National Association of State Utility Consumer Advocates ("NASUCA") at 2, 4, 6.

companies, cable operators, and alternative providers -- opposed the Plan evoking a plethora of legal and policy grounds. The Plan is so replete with legal infirmities that it simply cannot stand absent a complete capitulation by the states or Congressional rewriting of jurisdictional boundaries.

Two of the three largest ILECs in the country (following approval of the BellSouth-AT&T merger) challenged the soundness and fairness of the Plan. Verizon and Qwest cautioned that the Supporters had failed to overcome serious legal hurdles; and, while not agreeing on the solution, they identified numerous deficiencies and inequities in its particulars.

Not surprisingly, as the result of the financial benefit of the Plan to them, many – but not all – smaller ILECs that filed comments supported parts of the Missoula Plan, although their comments were riddled with wildly varying suggestions on how to improve it from their perspective. Many ILECs sought to be recategorized from Track 1 to Track 2 status or from Track 2 to Track 3 status, highlighting both the arbitrary nature of the Plan's three Tracks and the advantageous position of Track 2 and Track 3 carriers. Others advocated modifications to the "phantom traffic" proposals, which were amplified in the separate comments on the November 6, 2006, interim phantom traffic proposal.[5]

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5 *See, e.g.,* Comments of NECA at 7. The Joint CLEC Commenters filed comments and reply comments opposing the Supporters' November 6, 2006, "phantom traffic" proposal. The Joint CLEC Commenters will not recap that opposition in this reply, incorporating its comments and reply comments by reference. *See* Comments of Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications on the Phantom Traffic Proposal of the Missoula Plan Supporters, filed December 7, 2006 ("Joint CLEC Comments on the Phantom Traffic Proposal"); *see also*, Reply Comments of Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications on the Phantom Traffic Proposal of the Missoula Plan

In short, the Plan provides such a wide array of flawed policies that many commenting parties had trouble limiting their selections.[6] No segment of the industry buys into any piece of the Plan with anything approaching consensus, with the possible exception of those carriers that would enjoy Track 3 status.[7] This is not surprising in light of the fact that the Plan would allow intercarrier rates charged by these carriers to remain considerably higher than the rates charged by Track 1 and Track 2 carriers with which they would exchange traffic.[8] Moreover, as explained in detail by Verizon and Qwest, among others, the Plan would establish numerous subsidies for Track 3 carriers at the expense of ILECs, CLECs, CMRS carriers and others in Track 1, and even mid-size ILECs in Track 2. (See section IV.E., *infra*). Thus, the Plan's Supporters got it absolutely wrong when they stated that the Plan does not advance the interests or policy position of any particular company or class of carriers.[9] Major parts of the Plan do just that for would-be Track 3 carriers, as evidenced by the fact that the Plan generated no

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Supporters, filed December 7, 2006 ("Joint CLEC Reply Comments on the Phantom Traffic Proposal").

6 The heightened levels of aversion to the Plan across industry segments, with the possible exception of the rural ILECs, in combination of the Plan's extreme complexity will inevitably lead to disputes and litigation which will slow the pace of needed reform and deprive industry participants of a basic measure of stability. *See, e.g.,* Comments of Time Warner *et al.* at 4. *See also, e.g.,* Comments of NASUCA, *passim*; Comments of Time Warner Cable ("TWC") at 1; Comments of Eschelon Telecom, Inc. ("Eschelon") at 1.

7 A number of Commenters also noted that the sponsoring group of the Plan has shrunk considerably since work on the Plan initially began. SureWest at 11.

8 A number of mid-size ILECs that see themselves properly falling into Track 2 oppose major portions of the Plan. *See* Comments of SureWest at 13; Comments of Cincinnati Bell at 4-5 (finds fault with the Plan, including its categorization as a Track 1 carrier).

9 Comments of the Supporters of the Missoula Plan at 5.

real opposition from smaller rural carriers but generated substantial opposition from every other industry segment.

The Joint CLEC Commenters agree with numerous other commenters that the FCC should take some action now. But this does not mean that the Commission should be precipitous or drastic. No overhaul is necessary. A number of commenters correctly noted that the Plan would result in huge shifts of costs and financial responsibilities among carriers, States, and end users.[10] The justification does not exist to support imposing such large-scale changes on the industry. Given the probability that any reviewing Court would vacate central elements of the Plan on multiple legal grounds, it is likely that government policymakers would need to develop a second overhaul of intercarrier compensation only a few years after adoption.

As the Joint CLEC Commenters argued both in their initial comments as well as in their more focused comments and replies on the Supporters' November 6 "phantom traffic" proposal, the Commission can address the principal perceived ills in intercarrier compensation today by adopting more limited measures clearly within its jurisdiction.[11] *First*, there is general consensus that the Commission should lend regulatory aid to carriers trying to properly identify the origin of telecommunications

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10 *See, e.g.,* Comments of the People of the State of Illinois at 2 ("the Missoula Plan would transfer more than $245 million from AT&T Illinois and Verizon current customers to the companies, for no change in service"); Comments of the Texas Office of Public Utility Counsel, Consumer Federation of America, and Consumers Union ("Consumers Union") at 3 (projecting a bottom-line increase to consumers of approximately $4.5 billion).

11 The Joint CLEC Commenters agree with the numerous commenters that time for action is now. But this does not mean that the Commission should be precipitous or drastic. No overhaul is necessary.

traffic.[12] In the absence of any real evidence of the size and nature of the phantom traffic problem, however, the public interest would be best served if the Commission strengthens and clarifies the call signaling rules and takes steps to promote negotiation of traffic exchange and compensation arrangements[13] that deal with traffic using factors and other well established mechanisms in use today.[14] *Second*, the Commission should address the treatment of VoIP traffic in the *IP-Enabled Services* rulemaking (WC Docket No. 04-36), including the compensation principles that will apply to the exchange of such traffic *prospectively*.[15] Once these steps are taken, and the Commission develops experience with them, implementation of these measures should help tease out remaining

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12 *See, e.g.,* Comments of CenturyTel at 2.

13 Verizon is notable as a major ILEC counterbalancing AT&T and promoting steps that encourage negotiated solutions. While the Supporters and their friends talk about the Plan simply being a set of default rules which parties can voluntarily ignore, as Verizon notes (Comments at 3, 19), adoption of regulations that favor one set of carriers over another, as the Plan does in multifarious ways, would make default provisions the norm.

14 Several commenters do not believe reinforcing the call signaling rules is sufficient, asserting that telephone numbers increasingly are no good as a proxy and still allow gaming of the system. *See, e.g.,* Comments of Verizon Wireless at 17; Comments of Verizon at 22-23; Comments of Qwest at 9, 23-25. But these carriers offer no real solution, and such matters could, as the Joint CLEC Commenters explained in their comments on the "phantom traffic" proposal, be ameliorated by intercarrier agreements and the use of factors, as is often done today. Verizon echoes the Joint CLEC Commenters in recognizing this. Comments of Verizon at 24. Indeed, despite its protests, Qwest, for example, acknowledge that telephone numbers are still used to bill access charges. Comments of Qwest at 42.

15 Joint CLEC Commenters' agree with Qwest that these issues (VoIP, ESP exemption, and VNXX) should be addressed immediately to end the endless bickering from the ILECs, albeit the Joint CLEC Commenters do not concur that there has been widespread misuse in the areas. *See* Qwest Comments at 7, n. 6.

concerns, if any, which might warrant additional federal intervention.[16] Similarly, these steps would allow the States, as they have in the past, to continue to address intercarrier compensation issues appropriate to their jurisdiction as necessary, including the setting of rates for 251(b)(5) traffic and the treatment of intrastate access traffic.[17]

The limited approach advocated by the Joint CLEC Commenters avoids the pitfalls presented by the Plan, focuses on the areas where there is consensus that some action should be taken, and does not preclude the possibility that future action might be warranted if the need can be demonstrated.

II. THE MISSOULA PLAN WOULD ADVERSELY IMPACT CONSUMERS IN MOST STATES

The Supporters claim that the Plan would yield tremendous public interest benefits totaling tens of billions of dollars. Those commenters most directly responsible

16 A number of Commenters advocate the need for the Commission to approach the concerns over intercarrier compensation at a more deliberate pace, allowing an assessment of initial results and subsequent adjustments, if necessary, rather than instituting major revenue and cost and network shifts as the Plan would entail. *See, e.g.,* Comments of CenturyTel at 3, 15-16; Comments of TWC at 12 (one of the FCC's goals is to avoid rate shock to universal service); Comments of SureWest at 5, 14-16 (rapid shifts in universal service or intercarrier compensation rates will have huge detrimental effect.

17 The Joint CLEC Commenters also agree with CenturyTel at 14 that the Commission should address in its universal service rulemaking whether and how it will modify the contribution mechanisms before taking any steps that would lead to a huge increase in the universal service mechanisms. Such steps should not be taken as part of the consideration of the Plan in this docket. It is important that the Commission first remove any uncertainty created by that pending proceeding and give the industry time to adjust to the changes the Commission might adopt. *Accord* Comments of the Ad Hoc Users Association at 15-16. It should be further noted that the Chairman has proposed to address concerns with the substantial growth and inefficient distribution of universal service funds by instituting "reverse auctions." It is most troublesome that at the very time the Commission is considering such a proposal, the Plan's proponents are seeking to increase the size of the fund by billions of dollars.

and accountable for advancing the public interest -- the States -- strongly disagree. In addition, other comments and ex parte submissions seriously dispute the claims of the Supporters and demonstrate that the Plan will do much more harm to the public than any good. In fact, any good is likely to reside solely with the ILECs supporting the Plan's adoption.

Indeed, nearly all of the approximately two dozen State commissions submitting initial comments reflected deep misgivings about how the Plan would effect consumers overall. The proposals to permit significant increases in the Subscriber line Charge ("SLC") drew considerable fire from State commissions. For instance, Massachusetts claimed that the Plan's SLC increases and higher USF fees would almost certainly increase rates for consumers in the Commonwealth.[18] Similarly, the District of Columbia explained that the only D.C. stakeholders who will not be harmed by the Missoula Plan would be approximately 7,000 Lifeline customers. Their position would remain the same (but not improve) because their SLCs would remain the same. "All other ratepayers . . . would be harmed because their SLCs and other charges would increase to pay for the increased federal universal service fund needs, while they will be receiving no benefit from the increased funding."[19] Moreover, referring to the Plan's make-whole provisions, which are designed to be revenue neutral for ILECs, the Texas commission expressed concern "that such a dramatic increase in the SLC along with increases in the USF assessment could adversely impact the affordability of basic local telephone service

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18 Comments of the Massachusetts Department of Telecommunications and Energy ("MDTE") at 11-12.

19 Comments of the District of Columbia Public Service Commission ("DCPSC") at 7.

in Texas, particularly in rural areas and areas where competition has been slow to develop."[20] According to New Jersey, the Plan will directly burden New Jersey rate payers by more than $325 million with little or no countervailing benefits, and is particularly bad for low and middle income consumers, who are least able to afford the increased charges.[21]

The proposals to permit significant increases in the SLC drew State regulatory fire. The Missoula Plan's proposals regarding the Restructure Mechanism ("RM"), and the Early Adopter Fund ("EAF")[22] were also targeted by regulators as being

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20 Comments of the Texas Public Utility Commission ("TXPUC") at 3.

21 New Jersey at 3. As the Joint CLEC Commenters and NASUCA both noted, ignoring any increases to the Early Adopter Fund or Restructure Mechanism, the Plan would lead to a $6.9 billion increase in consumer charges to offset lost revenues of only $6 billion. Comments of Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications on the Missoula Plan ("Joint CLEC Comments"); Comments of NASUCA at 2. Exacerbating this of course, as discussed, *infra*, is the reality that the reduced access charges do not have to be flowed through to end users under the Plan, such that, ultimately, the new costs associated with the Plan will fall squarely and fully on consumers' shoulders to the profit of ILECs.

22 Two days ago, on January 30, 2007, five States (IN, ME, NE, VT, WY) and the Supporters filed an entirely new proposal, the Federal Benchmark Mechanism, to address the "complex myriad of early adopter issues." This proposal is intended to amend the EAF originally proposed in the Plan. The Supporters note that "this amendment is a significant step in the direction of a more fair and balanced approach to addressing the critical problem the Missoula Plan failed to address." Because this amendment has just been filed, the Joint CLEC Commenters do not comment on it herein. In addition, because of the import of this amendment, the Joint CLEC Commenters urge the Commission to seek comment on it.

particularly egregious – not surprising given their gargantuan size of a combined $2 billion, or more[23] – contributing to the harm the consumers will experience.

A study conducted by Economics and Technology, Inc. ("ETI Study")[24], which was submitted shortly after the initial comment deadline, supports the concerns of State commissions and others that the Plan is likely to harm consumers and damage the economy as a whole. The study thoroughly debunks the claimed benefits of the Plan, in particular those set forth in the Clarke Makarewicz study ("CM Study") accompanying the Plan. The CM Study, based on various assumptions and a non-public model, estimated that adoption of the Plan would produce economy-wide benefits of $54 billion during the first eight years. However, by injecting into the CM Study more realistic assumptions, ETI found that, to the contrary, the Plan would result in a public *harm* in the range of *$39 to $44 Billion.*[25]

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23 In their initial comments, the Joint CLEC Commenters addressed the gargantuan size of the RM. *See* Joint CLEC Comments on the Missoula Plan at 74. Numerous other carriers descried this aspect of the RM mechanism, especially in light of the already burgeoning size of the universal service fund and the other subsidies created by the Plan. *See, e.g.,* Comments of Sprint Nextel at 22; Core Communications at 5-6; Time Warner *et al.* at 10. Notably, the Supporters' revision to the Plan make clear that the RM will be even bigger. *See* Comments of the Supporters, Attachment A, p. 4. § 12 ("additional costs caused by the Plan ...resulting from implementation of the Phantom Traffic proposal are also recoverable from the RM"). Other Commenters, amazingly enough, contend that the RM will not be big enough. Comments of CenturyTel at 7.

24 *See* Lee L. Selwyn, Economics and Technology, Inc. *The Real Economic Impact of the "Missoula Plan" for Intercarrier Compensation: An Assessment Based on Reality,* filed in WC Docket 01-92 on Nov. 8, 2006.

25 ETI Study at 20, Table 9. Neither ETI nor the Joint CLEC Commenters endorse the CM Study or its methodology. For purposes of argument, however, ETI used the CM Study's methodology and showed that the Study's conclusions were based on faulty data and cannot be relied upon.

For example, a fundamental flaw of the CM Study team is that it assumed a 100% flow-through of access charge reductions. This is not a requirement of the Plan and is unlikely to occur without government mandates to do so. Numerous States took particular issue with the fact that any potential benefits from access charge reductions under the Plan, such as to heavy users of long distance service, are illusory because the Plan does not require that such reductions flow through to retail rates.[26] Indeed, as the Joint CLEC Commenters note in their initial comments, without a flow-through mechanism, the Plan would provide ILECs with a government-approved windfall.[27] Simply put, the Missoula Plan is nothing more than an enormous, $40 billion, wealth transfer from consumers to ILECs and therefore must be rejected.

The ETI response to CM demonstrates that even if half of the reductions flow through to retail rates, assuming all of the other CM assumptions are correct, the Plan results in a net detriment to consumers.[28] ETI found numerous other flaws with the CM Study, including that it either incorrectly or unrealistically assumed that 100% of voluntary intrastate reductions would be adopted by the States immediately, relied upon outdated price elasticities of demand, assumed that all wireless and toll minutes are sold

26 *See, e.g.,* Comments of the TXPUC at 3; Comments of the New Jersey Board of Public Utilities ("NJBPU") at 5, 12; Comments of the Oklahoma Corporation Commission ("OCC") at 5; Comments of the Wyoming Public Service Commission ("WYPSC") at 5; Comments of the Wisconsin Public Service Commission ("WIPSC") at 10-11.

27 *See, e.g.,* Joint CLEC Comments at 66.

28 ETI Study at 14, Table 4. This table "examines the overall sensitivity of the CM results to the flow-through assumption. Holding all else equal, flow-throughs of 100% through 0%, in 10% increments, of the usage rate decreases contemplated in the *Missoula Plan* are calculated. As the Table demonstrates, at any flow-through level below 54% (and accepting all other CM assumptions), the 'economic benefits' of *Missoula* turn decidedly *negative.*"

today on a per-minute basis, and applied regional and other multipliers without foundation. When all of the errors in the CM study are corrected, the ETI analysis showed that the Plan will not resound to the public's benefit but instead will saddle it with a burden of tens of billions of dollars. The Commission, in fulfilling its public interest responsibilities, has an obligation to protect end users and competition from such harm.

III. THE PLAN IS NOT NECESSARY FOR INTERCARRIER COMPENSATION STABILITY

The Joint CLEC Commenters do not agree with the claims of a few commenters that one of the Plan's advantages is that it would provide stability in the long run not characteristic of intercarrier compensation today.[29] To the contrary, not only is the Plan liable to impose economic burdens on consumers and the economy as a whole, it will also upset existing interconnection arrangements and require huge shifts in costs across jurisdictions, between carriers, and among users. These effects, which are examined below, will have additional seriously adverse ramifications for this nation by creating grave uncertainty for consumers and carriers.

The first question one must ask, is whether there is any significant instability today that requires redress. Currently, as it has been for the past decade, intercarrier compensation is governed by three main sources, the first being tariffs. Access charges are covered by state and federal tariffs for intrastate and interstate access services, respectively. This is a well-established regime that has been in place for over two decades. Both categories of tariffs have been relatively stable in recent years.

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[29] *See, e.g.,* Comments of Eastern Rural Telecom Association at 1.

Where there are changes, they occur pursuant to a well-defined process that is understood by all carrier participants. This process provides a mechanism that gives carriers the opportunity to review and, should they desire, challenge any changes. Thus, intercarrier compensation-related tariffs have helped create and maintain an atmosphere of certainty.

The second principal governing intercarrier compensation rates are Section 252 interconnection agreements, which apply principally to reciprocal compensation traffic.[30] These agreements typically persist for two or three years, or longer under evergreen provisions, which Verizon correctly and refreshingly notes are part of the bargain of the initial interconnection agreement.[31] Many carriers opt-in to other approved agreements. There is some prospect for changes in rates during the term of many interconnection arrangements as a result of state rate decisions, but these proceedings, if they occur, offer affected carriers the opportunity participate. The stability provided by interconnection agreements is not a matter of any serious doubt.[32]

The third and final principal source governing intercarrier compensation is the Commission's interim regulations governing rates for dial-up Internet access traffic. These rates and the manner in which they are applied have been the same for

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30 Interconnection agreements, of course, also typically cover *inter alia* interconnection architectures and matters concerned with interconnection transmission facilities used for the exchange of traffic, matters which are *not* part of reciprocal compensation and should not be the subject of intercarrier compensation reform. *See* the discussion in the Joint CLEC Commenters' initial comments and elsewhere in this reply.

31 Comments of Verizon at 35-36.

32 That is not to deny that there may be controversies during the transition process to successor agreements that must be worked out or handled through negotiation, mediation, or arbitration. But these controversies, such as they are, enable carriers to respond to changes in the industry as a result of competition and consumer choices as to services and technologies.

approximately five years. If the rates do change in the future, it will be the result of Commission decision. Any regulations adopted will lend certainty as to those rates. However, while the regulations and rates for dial-up ISP bound traffic relate to a diminishing portion of traffic as more and more end users move to broadband alternatives in place of dial-up access, the Joint CLEC Commenters cannot agree with calls to eliminate compensation for the exchange of ISP-bound dial-up traffic.[33] Carriers incur costs in terminating traffic bound for ISPs, just as they do with any other call, and the treatment of compensation for this type of traffic should not be different than for other traffic terminated.[34]

In sum, at this time, there is no real source of instability for the Plan to ameliorate. Quite the contrary, as many commenters noted, the Plan will create massive instability of its own. It involves a multi-year kaleidoscope of changing rates and, to quote Qwest, "mind numbingly complex" regulations.[35] Within the Plan, it takes several years before rates reach their "final" levels. After the six-year term of the Plan, it is not clear what will happen to the rates, or even what framework will govern. There is little dispute that the Plan will result in huge shifts in costs as the Plan drastically changes how the ILECs recover their revenues through a variety of make whole mechanisms. In

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33 *See, e.g.,* CenturyTel at 17-18; Qwest at 45-46. These suggestions ignore the fact that there are costs for terminating carrier, *see, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"), and that the originating carrier is compensated by its customer (the calling party). At least the Plan recognizes the need to treat such traffic at parity with other traffic, albeit only up to a 3:1 ratio.

34 *See, ISP Remand Order,* ¶¶66-67.

35 Comments of Qwest at 2. *See also,* Verizon at 17.

making its decision on the Plan, the Commission should give no credence to the Supporters' claims of additional stability.

IV. THE PLAN HAS MANY SOURCES OF UNCERTAINTY AND SEEDS OF CONFLICT

The record shows that adoption of the Plan would create an environment marked by uncertainty which, eventually, could lead to the wholesale unraveling of the Plan if adopted. Further, as the many comments of the State commissions in opposition adumbrate, adoption will invite disputes and litigation for years to come.[36] The Plan achieves this by undoing key aspects of the current intercarrier compensation landscape, failing to achieve even its stated objectives, and ignoring the law.

A. The Plan Would Undo Key Aspects of the Current Regulatory Framework

As an initial matter, the Plan would turn back the clock and, in one fell swoop, undue a decade of state commission decisions regarding interconnection rights and obligations.[37] Commenters decried the Plan's assault on what have become accepted as basic interconnection rights, such as the right of CLECs to interconnection at a single point of their own choosing with ILEC networks, and the financial obligation of both carriers for delivering traffic from their own network to those of other carriers over interconnection transmission facilities. The proposed Edge architecture, to put it bluntly, is a backdoor attempt by AT&T and some of its partners to overturn decisions that they have litigated and lost and then litigated again – and lost again. Merely implementing the

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36 *See, e.g.,* Comments of CenturyTel at 5; Comments of Time Warner et al. at 4; Comments of Cavalier et al. at 43-47.

37 Joint CLEC Comments at 45-46; Comments of Cavalier at 21-28; Comments of Time Warner *et al.* at 16-19; Comments of Verizon Wireless at 3-8. *See also, e.g.,* Comments of the MOPSC at 50-54; Comments of the PUCO at 23-24.

Edge architecture proposal from a contract administration standpoint would be a needlessly costly adventure.[38] Verizon highlights these concerns, and sees the Plan as inviting disruptive and costly changes to existing interconnection architectures and existing precedent.[39] These defects alone are sufficient reason to reject the costly Edge-related components of the Plan.

The States, who are co-responsible with this Commission for the current regulatory framework which the Plan would eliminate, explained that their decisions were made with the objective of supporting and sustaining the emergence of competition. The States also have expended considerable time and resources to reach and implement those decisions. By permitting ILECs rather than CLECs to choose the point of interconnection, or Edges, for example, and requiring CLECs to establish more facilities at more locations and at a greater cost, the Plan would set back the promotion of competition. The Ohio commission maintained that the Plan's interconnection provisions are inconsistent with Section 251 of the Act and will "require the construction of additional uneconomic facilities by all carriers and lead toward a replication of the ILEC network."[40] The Pennsylvania commission agreed, concluding that "[a] proposal that increases the number of edge connections in an MSA/MTA would increase

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38 *See* Comments of COMPTEL at 10; Comments of Qwest at 13-16 (the Plan undermines the Edge concept by establishing different rules for different tracks, which disproportionately distributes the burdens of implementation and maintenance; moreover putting into place all of the Edge requirements -- regrooming and billing changes -- could not achieve without huge costs and major interruptions).

39 Comments of Verizon at 4, 6, 35-36.

40 Comments of the PUCO at 24.

interconnection costs ultimately recovered in customer service rates."[41] Texas criticized the penalties under the Plan associated with maintaining existing interconnection arrangements consistent with Section 251(c)(2), finding that "carriers that currently interconnect at a point *other than the designated Edge* may be required to undertake costly network reconfigurations, and possibly renegotiate or re-arbitrate existing interconnection agreements."[42]

Indeed, the Texas commission puts its finger on a particular sore spot. Under the Plan, carriers that choose to maintain their existing State-approved interconnection arrangement under Section 251 of the Act are penalized in several ways under the Plan. For example, where a non-ILEC maintains its existing interconnection arrangement so as to avoid the regrooming and other costs associated with moving the interconnection to an Edge, the non-ILEC must "provide, at its own expense, the transport to interconnect its network with the Track 1 ILEC's Virtual Edge for traffic exchanged in *both directions* over this interconnection arrangement with the ILEC."[43] A number of commenters joined the Joint CLEC Commenters in decrying this aspect of the Plan.[44]

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41 Comments of the PAPUC at 18. *See also,* Comments of the FLPSC at 7 (decrying that "if [a] competitor does not have the facilities available to reach the incumbents' Edges, the Plan may require competitors to pay tariffed special access rates for interconnection facilities").

42 Comments of the TXPUC at 5.

43 *Id.* at § II.E.3.d.ii(2)(b) (emphasis added).

44 *See, e.g.,* Comments of Time Warner *et al.* at 18 (carriers assume financial obligation for transport to the Edge of the other carrier regardless of the actual interconnection arrangement between the carriers). *See also* Comments of COMPTEL at 12-14. This leads to a double hit where rural ILECs designate

Provisions of the Plan like the one above, which force one interconnecting carrier to pay for the second carrier's use of an interconnection transmission facility provided by the first carrier, are directly contrary to Sections 51.703 and 51.709 of the Commission's rules and thus Sections 251(b) and (c) of the Act.[45] Under Section 51.709(b) of the Commission's rules, each party is required to pay its pro-rata share of transport costs of a two-way circuit based upon the amount of its originating traffic traversing the circuit. In other words, existing law *requires* that each carrier pays in one direction. By requiring a CLEC to be responsible for the transport costs in both directions, the Plan contravenes Section 51.709(b) and is at odds with Section 51.703(b), which prohibits a LEC from charging other carriers for traffic that originates on its network.[46]

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multiple end offices as their Edges rather than a single delivery point as they often do today. *See* Comments of Time Warner *et al.* at 18-19.

45 *See* Joint CLEC Comments at 54-58.

46 47 C.F.R §§51.703, 51.709. Section II.E.3.d.ii proposes that "[t]he Track 1 ILEC will provide, at its own expense, the transport to connect any of its end offices that subtend its Virtual Edge for traffic exchanged with the non-ILEC *in both directions* over this interconnection arrangement." *Id.* at § II.E.3.d.ii(2)(a) (emphasis added). This disingenuous attempt to appear even-handed is nothing more than the sleeves off of the ILECs' collective vests, however. The ILECs have always provided the transport between their offices that is necessary to deliver their originating traffic to the POI. Thus, the ILECs seek to impose additional obligations upon CLECs, while the ILECs are left simply to perform the same functions that they have always performed, tasks that CLECs have been performing, and would continue to perform, on their own networks as well.

While in some cases the Plan contains a partial offset to this obligation, in that the ILEC will pay a portion of its use of the interconnection transmission facility – where the airline distance between the non-ILEC's switch and the Virtual Edge exceeds that between the non-ILEC's switch and the designated Edge – the non-ILEC will still be paying for use of the transmission facility that, under current law, is the ILEC's responsibility. *See* Missoula Plan at 32-33, §II.E.3.d.ii(2)(c) ("When the airline distance between the non-ILEC's Edge and the Track 1

The original policy bases for these rules remains valid today. The FCC concluded *inter alia* in the *Local Competition Order* that "[t]he amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility."[47] The Commission stated that "flat rates, rather than usage sensitive rates, should apply to the purchase of dedicated facilities," explaining that "economic efficiency may generally be maximized where non-traffic sensitive services, such as the use of dedicated facilities for the transport of traffic, are priced on a flat-rated basis."[48] The Commission continued, further explaining that "no matter what the specific [interconnection] arrangements, [interconnection] costs should be recovered in a cost-causative manner."[49] Thus, the Missoula Plan contravenes the Commission's existing interconnection rules by, among other things, divorcing cost recovery from cost causation. Indeed, the concept of cost-causation, which is a bedrock principle of telecommunications ratemaking and which should therefore be woven into the overall fabric of the Plan, instead is conspicuously absent from it.

ILEC's Virtual Edge is greater than the distance between the non-ILEC's Edge and the ILEC's default Access Tandem Edge, the Track 1 ILEC will compensate the non-ILEC a dedicated transport charge based on the number of miles that is equivalent to *the difference between these two transport distances*, not to exceed the distance between the Virtual Edge and the default Access Tandem Edge. The transport charge will cover only the transport capacity required to exchange the parties' Non-Access Traffic *in both directions* over this interconnection arrangement." (emphases added).

47 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499, ¶1062 (1996) ("*Local Competition Order*").

48 *Id.* at ¶1063.

49 *Id.*

B. The Plan Fails to Establish Its Own Objective of Rate Unification, in Large Part, by Establishing Arbitrary Tracks Leading to a Convoluted Regulatory Framework Ripe for Arbitrage

One of the key failings of the Missoula Plan, noted by state commissions[50] and others,[51] opponents and even supporters, is that its does not achieve its stated goal of unifying intercarrier compensation rates. The Florida commission aptly notes that "[w]hile the Plan reduces each Track 3 carrier's intrastate access rates to interstate levels, a vexing disparity remains in intercarrier rates among the three tracks and among Track 3 carriers."[52] This troubles a number of State commissions in addition to their other objections to the Plan. The Missouri Public Service Commission contends that there "is no justification in the Plan for basing intercarrier compensation reform on the size of the carrier."[53] Texas sums it up well: "At the end of [the four-year transition] period, the industry will be left with a variety of different rate levels, depending upon the size of the carrier, whether it is rate-of-return regulated or under incentive regulation, and whether it is in a rural area."[54] Virginia avers that the Plan's purported rate unification scheme results in rates that 'vary significantly between the Tracks and only in Track 3 are there any individual carrier specific "unified" rates.'[55] Because the Plan would leave in place huge rate disparities between Tracks, it creates an entirely new set of arbitrage

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50 *See, e.g.*, Comments of the WYPSC at 2, 8; Comments of the Mid-Atlantic Conference of Regulatory Utility Commissioners and State Commissioners of the MACRUC States ("MACRUC") at 4.

51 *See, e.g.,* Comments of Cavalier at 47-49; Comments of Qwest at 2.

52 Comments of the FLPSC at 3.

53 *See* Comments of the MOPSC at 31. The Pennsylvania PUC bemoans the fact that the Plan will allow rate disparities between carriers that are exchanging traffic when both are performing the same function. PAPUC at 15.

54 Comments of the TXPUC at 9.

55 Comments of the VSCC at 3.

opportunities for carriers between tracks that are in competition with one another and exchanging traffic in the same local or extended calling areas.[56]

The creation of Tracks with such diverse sets of rates and regulations that apply to them is exacerbated by the *arbitrary nature of the Tracks*. They are created especially for the Plan and are not borrowed or even derived from another regulatory context. As such, several commenters note, they are hopelessly arbitrary and without foundation in reality.[57] That the comments of a number of carriers focused on their desire to be reclassified to a different Track shows that the Tracks are just arbitrary devices to provide certain carriers with a more advantageous interconnection and compensation scheme than others.[58]

Setting aside the legal and policy difficulties of the Plan for a moment, the Plan collapses under its own weight and does not even achieve its own stated central objective. By trying to deal out special privileges and create new subsidies to keep the rural ILECs happy, the Plan entrenches carriers into separate Tracks that have no basis in reality. Rather than go down the road of the Plan's convoluted map, the Commission should reject the plan and address the basic underlying issues outlined by the Joint CLEC Commenters in their initial comments and their "phantom traffic" comments.

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56 Comments of Cavalier at 54 (discussing carriers whose operating areas include exchange of traffic with carriers from multiple Tracks); Comments of Verizon at 5, 20-22.

57 *See, e.g.,* Comments of SureWest at 2, 16-21.

58 *See, e.g.,* Comments of Cincinnati Bell at 4; Comments of the Puerto Rico Telephone Company, *passim*; Comments of Southeast Telephone at 1-2; Comments of Nex-Tech at 1; Comments of Frontier at 9-10.

C. There is Widespread Concern About the Plan's Impermissible Intrusions into State Jurisdiction

As the Joint CLEC Commenters explained in detail, the Plan would tread into numerous matters over which the States have statutorily mandated jurisdiction.[59] Not surprisingly, the States forcefully oppose the Plan on the issue of preemption of State authority, with particular regard to reciprocal compensation, tandem transit, and intrastate access charges. The New Jersey Board of Public Utilities states that "[a]lthough the Plan suggests that it was 'designed as a cooperative effort between the FCC and the states,' it appears that the end result of the Plan is to undermine State action over intercarrier payments."[60] The Maine, Nebraska, and Vermont commissions conclude that the Plan's preemption provisions create the unnecessary risk of a legal challenge, which "can create significant uncertainty within the industry for years, inhibiting investment as the case winds its way through various federal appellate courts."[61] According to New York, preemption of intrastate ratemaking and federalization of revenues "would be ill-advised as a matter of policy, and would also be inconsistent with the Act's reservation of intrastate ratemaking authority to the [s]tates."[62] Similarly, the Wyoming commission asserts that the Missoula Plan "inappropriately intrudes upon state commission jurisdiction."[63] Connecticut, D.C., Florida, Missouri, Ohio, Pennsylvania and Virginia

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59 Joint CLEC Comments at 25-65.

60 Comments of the NJBPU at 9.

61 Comments of the Early Adopter States at 13. *See also, e.g.*, Comments of the TXPUC at 3.

62 Comments of the New York Public Service Commission ("NYPSC") at 7.

63 Comments of the WYPSC at 7.

also oppose the Plan on the basis that the FCC cannot preempt the States regulation of intercarrier rates.[64]

Regarding the Plan's intent to have the FCC set intrastate access charges, the Virginia commission contends that the "Missoula Plan proponents are attempting to bypass legitimate state regulation" and that the Plan would "improperly preempt state jurisdiction over intrastate access charges."[65] Missouri concurs that "[S]ection 201 of the Act only gives the Commission authority over matters to which the Act applies, and the Act reserves jurisdiction to the States over intrastate access charges."[66] The Missouri commission also explains that the Plan's transiting provisions are contrary to the Act, arguing that the ILECs' tandem transit service is "an obligation imposed by Sections

64 *See* Comments of the Connecticut Department of Public Utility Control ("CTDPUC") at 7-8 ("[t]he CTDPUC objects to those provisions requiring State preemption because there is no basis in law that provides for elimination of State authority over intrastate activities"); Comments of the DCPSC at 7 ("[t]he Supreme Court clarified that while the FCC has the authority to establish general pricing regulations, it is the states that have the ultimate responsibility to set rates according to these regulations"); Comments of the FLPSC at 3 ("[t]he Plan not only conflicts with preemption policy, it also treads on state law"); Comments of the MOPSC at 12 ("[t]he Commission does not have the authority to adopt the Plan because the Plan imposes federal rules in areas that are subject to the direct authority of the states under the Act"); Comments of the PUCO at 3 ("[s]tate commissions cannot lawfully abdicate their statutory authority any more than the FCC can unilaterally expand its own jurisdiction"); Comments of the PAPUC at 6 ("[t]he PAPUC questions the legality and the need for preemption under the relevant provisions addressing preemption in TA-96").

65 Comments of the VASCC at 11. In addition to stripping States of jurisdiction over intrastate access charges, the Plan would also eliminate certain aspects of CLECs' ability to even charge originating access, as Time Warner *et al.* explain. Comments of the Time Warner *et al.* at 2, 6. The Joint CLEC Commenters join Time Warner in opposition to the adoption of any measure which restricts CLECs' ability to charge originating access and recover their costs of supporting the retail services of other providers.

66 Comments of the MOPSC at 12.

251(c)(2) and (3), with transiting duties set out in Section 251(c)(2)"[67] and that as a consequence of the Plan's adoption, "much of the transit traffic will no longer be subject to interconnection agreements under Sections 251 and 252, thus no longer subject to state commission purview," contrary to the intent of Congress.[68]

Regarding State jurisdiction over Section 251(b)(5) reciprocal compensation rates, the Ohio Public Utilities Commission states that "the 1996 Act clearly...grants State commissions, not the FCC, the responsibility for establishing reciprocal compensation rates."[69] It explains that "even where the 1996 Act extends into intrastate communications, a distinct role remains for State commissions to apply and implement FCC guidelines . . . to establish rates and mediate or arbitrate interconnection agreements, etc."[70] The D.C. Commission relies on the Supreme Court's holding in *AT&T v. Iowa Utilities Board* in support of its position, explaining that the Court "clarified that while the FCC has the authority to establish general pricing regulations, it is the states that have the ultimate responsibility to set rates according to these regulations."[71]

A number of other parties join the States and the Joint CLEC Commenters in challenging the Supporters' presumptions that the Commission has sufficient

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67 *Id.* at 51.

68 *Id.* at 52.

69 Comments of the PUCO at 15.

70 *Id.* at 18.

71 Comments of the DCPSC at 7, *citing AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 384 (1999). *See also* Joint CLEC Comments at 27.

jurisdictional authority to implement the Plan.[72] These commenters explain that States retain jurisdiction over intrastate access charge rates as well as rates (where carriers cannot agree) that flow from Section 251(b)(5) and 251(c)(2) obligations.[73] The Plan's presumptions of jurisdictional authority are so suspect that both Verizon and Qwest[74] ask the Commission to consider very closely other preliminary actions not within the Commission's control to shore up the holes, such as convening a Joint State-Federal Board. They and other parties caution the Commission of the grave disaster that would occur if the Commission adopted the Plan in some form, and the carriers affected – namely the whole industry – spends hundreds of millions of dollars to implement it only to have it overturned for lack of jurisdictional foundation.[75]

In a related vein, a number of States note that, separate and apart from legal concerns and concern with upsetting the interconnection framework, the State

72 *See, e.g.,* Comments of SureWest at 29; Comments of Qwest at 6; Comments of Cavalier *et al.* at 58-66; Comments of RNK Telecom at 3.

73 Comments of SureWest at 29; Verizon Comments at 29 (States set Section 251(b)(5) rates under the Act); Qwest notes in its Comments (at 52) that, contrary to the Plan's suggestions, the FCC cannot forbear from statutory limitations on its own jurisdiction. Further, only the States can set Section 251(b)(5) rates, as the Joint CLEC Commenters and others have shown. *See* Joint CLEC Comments at 12-24.

74 Comments of Qwest at 10-11, 53-54 (proposes Joint Board solution – moving intrastate costs to interstate jurisdiction – as a possible way of shoring up jurisdictional problems). But even Qwest recognizes that with this solution, States must still have rate setting discretion. Consequently, a Joint Board is not a panacea for the Plan's inherent jurisdictional deficiencies. Notably, no state commissions are calling for a Joint Board.

75 *See, e.g.*, Comments of Qwest at 51("the Commission must be aware that there is danger in tripping too lightly over jurisdictional problems"); Verizon at 30 ("it would be irresponsible for the Commission to embark" on implementing the plan before the jurisdictional roadblocks under existing law are removed). SureWest at 30.

regulators are in the best position to ascertain the need, if any, for intercarrier compensation reform in their States. For example, Florida notes that "it is properly the role of states to resolve intercarrier compensation rate disparities that are within their jurisdiction."[76] Similarly, Texas explains that "states are also in a better position to tailor intercarrier compensation mechanisms to the types of traffic that are mandated by state law, such as expanded local area calling arrangements, and to implement statutorily mandated compensation schemes, such as bill and keep."[77] Texas also maintains that it "has been on the frontline with respect to addressing the myriad of intercarrier compensation issues that are market affecting and, in many instances, cases of first impression."[78] Ohio recounts that it has been overseeing intercarrier compensation reforms in its State going back to at least 1984.[79] These States assert that, on this basis alone, they cannot support the Plan.

D. The Initial Comments Provide No Further Support for the Plan's Commission-Imposed Non-Cost Based Rates

The record confirms that the Plan's proposed rates in general are unjustified, leaving aside, for a moment, whether they are to be set by State regulators or

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76 Comments of the FLPSC at 7.

77 Comments of the TXPUC at 8.

78 *Id.*

79 Comments of the PUCO at 42. Other States have actively addressed intercarrier compensation within their borders in creative ways addressing their own determinations of public interest that, while perfectly legitimate under federal law, would be inconsistent with the Missoula Plan, were it adopted. For example, Missouri has adopted Metropolitan Calling Areas ("MCAs") surrounding principle cities, such as St. Louis, Kansas City, and Springfield, in which a single rate applies to all traffic that originates and terminates within the MCA, regardless of who the originating and terminating carriers are. *Id.* at 41-43. The Plan's three-Track approach would undermine this solution adopted by the State regulator.

the Commission. Numerous commenters echoed the demonstrations of the Joint CLEC Commenters that the call termination rates for non-access traffic are below cost and inconsistent with numerous State Commission determinations.[80] The initial comments also leave no doubt that the tandem transit rates included in the Plan are not cost-based and are exorbitant,[81] and the regulations unfairly burden non-ILECs in terms of financial responsibilities.[82] Indeed, the initial comments contain no specific support for the rates contained in the Plan for tandem transit service. However, the Supporters' proposal for phantom traffic made clear that the unjustifiably high tandem transit rate is designed also to cover mandatory call detail records under that proposal. Yet, as explained in the Joint CLEC Commenters' reply comments on the phantom traffic proposal, most carriers do not want or need the call detail records to achieve appropriate compensation for terminating transit traffic.[83] Consequently, the Plan's phantom traffic proposal – and the tandem transit rate – discriminates against CLECs because they would be asked to

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[80] Comments of CenturyTel at 5 (Track 2 carrier concerned termination rates are not cost-based); Comments of Cavalier at 49.

[81] Comments of Cavalier at 60 & Att. 1 (discussing State commission decisions setting tandem transit rates); *id.* at 64 (tandem transit rates must be set at TELRIC); *see also* Joint CLEC Commenters at 63-64 (inflated proposed transit rates cannot pass muster).

[82] *See, e.g.,* Comments of Verizon Wireless at 13-14 (the Plan imposes on non-ILECs indirectly interconnecting with Track 2/3 carriers *all tandem transit costs in both directions*); Comments of Qwest at 3-4, 13 ff. (Track 1 tandem transit provider bills Track 1 terminating carrier when Track 3 carrier originates the traffic).

[83] Joint CLEC Comments on the Phantom Traffic Proposal at 11.

subsidize modifications to ILEC networks to support the Plan's unnecessary call detail record requirements.[84]

Additionally, the Plan allows ILECs to charge even higher tandem transit rates after just a few years for intraMTA traffic, a category which includes most tandem transit traffic today, and also allows the tandem transit carriers to shift many switched access functions and the related rates to the tandem transit function with their relatively unbridled rates after a short period.

These aspects of the Plan ignore applicable statutory standards. Both call termination rates and tandem transit rates are subject to statutory pricing standards in Section 252(d). By failing to even attempt to comport with these standards, the Plan's proposals for these rates are unequivocally unlawful. The Supporters' goal of uniformity among intercarrier rates, whatever its merits, cannot trump statutory requirements.[85]

E. The Record Reflects Widespread Views that the Plan Discriminates Against CLECs and in Favor of Smaller, Rural ILECs

The 1996 Act created three sets of interconnection obligations under Section 251, each successive one applying to a narrower class of carriers. First, the 1996 Act mandates direct *or* indirect *interconnection* obligations applicable to all carriers (Section 251(a)). Section, Section 251(b) creates a set of obligations applicable to local

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84 Significantly, because certain types of access traffic would be recharacterized as tandem transit traffic under the Plan (Missoula Plan at 54) (jointly provided terminating and originating switched access charges would become tandem transit services in years 3 and 4), the applicability of the call detail record requirement and the high tandem transit rates exceeds what today is considered tandem transit traffic in most ICAs.

85 In any event, rather than unify rates, the Plan will, as many Commenters join Joint CLEC Commenters in explaining argues, exacerbate disputes between Track 1 and Track 2/3 carriers. Comments of Verizon at 8; Comments of COMPTEL at 2-4.

exchange carriers, including the obligation to enter into reciprocal compensation rates. Finally, Section 251(c) contains a more stringent set of interconnection obligations (as well as unbundling, resale, and collocation duties) applicable to incumbent local exchange carriers. This trifid framework reflects a Congressional desire to promote competitive access between local networks and especially access to those incumbent networks which historically had been *de facto* or *de jure* monopolies.

The Plan would also create a tri-partite structure. But this time, CLECs and other competitive carriers are placed at the bottom of the stack. ILECs are much higher up albeit not at the top, and – just above the ILECs – sit the rural ILECs (Track 3 carriers under the Plan). The record reflects these infirmities of the Plan's treatment of the CLECs and other competitive non-ILEC carriers:

- The Restructure Mechanism would not be available to CLECs and other non-ILECs, conferring a potentially significant cost and revenue advantage on all ILECs.

- Burdensome interconnection obligations would be imposed upon CLECs and other non-ILECs, giving ILECs more control over the process than Congress ever intended.

- The Plan fails to recognize the obligations of ILECs to provide tandem transit services as a legal obligation under the Act,[86] and allows those carriers which continue to provide tandem transiting functions to charge unjustified and outrageously high charges for tandem transit service.

86 The Plan does require carriers currently providing tandem traffic service to continue to do so as a regulatory, not statutory, obligation.

1. Initial Comments Supporting the Plan Make No Effort to Dispel the Conclusion That the Restructure Mechanism Is Unjustifiably Unavailable to CLECs, Otherwise Discriminatory, and Against the Public Interest

The Joint CLEC Commenters explained that the Missoula Plan's Restructure Mechanism is discriminatory in that it is available to offset losses in access charge revenues for ILECs only. Competitive carriers universally decried this aspect of the Plan, and this concern also was expressed by States.[87] The discrimination inherent in this feature is at least three-fold: first, as access charges are forced down under the Plan to below-cost levels (especially for Track 1 carriers), ILECs can recover those revenues lost and not recouped through the increased SLC while CLECs cannot.[88] Second, although the Plan is silent about how the Restructure Mechanism will be funded – a fact exacerbated by the internal debate in the Supporters' comments about whether the Commission has authority to adopt the Restructure Mechanism under Section 201 or Section 254 of the Act – it is a safe bet that the burden will fall equally on customers of carriers that *receive no benefit* from the Restructure Mechanism, *i.e.,* CLECs, as well as on those who do, creating a subsidy flowing from the CLECs to the ILECs. Third, to the extent that Track 3 carriers lose lines to competition, they will still recover from the

87 *See, e.g.,* Joint CLEC Commenters at 66-67; Comments of Cavalier *et al.* at 10; Comments of Sprint Nextel at 20; Comments of TWC at 8; Comments of Eschelon at 9; Comments of Nex-Tech at 5; Comments of the Early Adopter States at 7; Comments of the PUCO at 32-33; Comments of the VASCC at 13-14; Comments of the WIPSC at 9-10.

88 Joint CLEC Commenters at 76-77; Comments of Cavalier at 11. The Supporters' Plan amendments make clear that the discrimination is not limited to the ability of ILECs to recover the loss of access revenues where CLECs cannot, but the costs created by implementation of the Plan's "phantom traffic" proposal will also be recoverable by ILECs *but not by CLECs*. Specifically ILECs will be able to use the Restructure Mechanism to recover costs associated with mandatory call detail records, trunk group costs, and the like, whereas CLECs would not have that opportunity. *See* Comments of the Supporters, Attachment A, p. 4. § 12.

Mechanism as though they still had those lines, which exacerbates the first two categories of discrimination.[89]

Complaints regarding the discrimination of the RM were not limited to competitive providers. Verizon, for example, notes that because the subscriber line charge increases are greater for Track 1 carriers than Track 2 carriers, the availability of the RM to Track 1 ILECs is less than for Track 2 and Track 3 carriers.[90]

Aggravating the discriminatory nature of the RM is the fact that the subscriber line charge is subject to considerable manipulation by ILECs as a result of the considerable pricing flexibility afforded in its application. Other Commenters joined the Joint CLEC Commenters in their concern that ILECs would have the ability to target large SLC increases in areas with little or no competition while keeping the SLC low in regions experiencing more competition.[91]

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89 Moreover, as Time Warner *et al.* and others make plain, even though Track 1 carriers may have to take into account line loss when determining the amount they can recover from the discriminatorily available RM, there is nothing to take into account the expected lower access revenues per line at the end of the Plan in comparison with the beginning of the Plan. *See* Comments of Time Warner *et al.* at 11 (describing the unchanging access shift per line under the Plan for its duration); Comments of Cavalier at 39 (the Plan contains insufficient recognition of declines in numbers of lines and the diminishing costs involved in providing access service in the first place). Not reducing the per line subsidy is especially egregious where the cause of lower access charge revenues per line is the result of increased wireless usage, which will lead to a double recovery for the RBOCs controlling large wireless affiliates. Comments of Time Warner *et al.* at 11.

90 Comments of Verizon at 12.

Track 1 carriers would have to raise the SLC to $10.00 before dipping into the RM, whereas Track 2/3 carriers only had to raise it to $8.75 before being able to turn to the RM, making this make-whole mechanism more readily available to the rural ILECs. Comments of Verizon at 12; *Accord* comments of Qwest at 19.

91 *See, e.g.,* Comments of Time Warner et al. at 3, 14; *Accord* Comments of the Joint CLEC Commenters at 77.

In the initial comments, the Joint CLEC Commenters made clear that the RM runs afoul of Section 254, and below explain why Section 201 also does not support adoption of the RM.[92] Whether it is considered under Section 201 or 254, a number of interested parties echo the Joint CLEC Commenters' original comments that the RM is a bad idea from a policy perspective.[93] The Ad Hoc Telecommunications Users Committee presents the most forceful case, noting revenue neutrality is the engine driving the Missoula Plan.[94] This user advocate group notes that before the RM can even be considered, the Commission must examine a host of factors quantitatively, including the allocation of costs between regulated and unregulated services in *both* the federal and state jurisdictions, the usage sensitive revenues lost as a result of other intercarrier compensation changes, demand stimulation from lower rates, revenue effects from any authorized increased line charges, and so forth.[95] By preserving revenues when competition has been driving access revenues down, the RM would serve to shield rural Americans from the benefits of competition by creating barriers that protect the rural ILECs from competitive entry.[96] Competition is a force for public good in rural areas as

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92 Joint CLEC Comments at 72-75; *see* Section IV.F., *infra*.

93 *See, e.g.,* Comments of Qwest at 7, 22; Comments of Cavalier *et al.* at 10; Comments of Sprint Nextel at 20; Comments of TWC at 8; Comments of Eschelon at 9; Comments of Nex-Tech at 5.

94 Comments of Ad Hoc Users Association at 10.

95 Comments of Ad Hoc Users Association at 10.

96 *See, e.g.,* Comments of Time Warner *et al.* at 2, 6; Comments of COMPTEL at 5 (disparities in the Plan between Track 3 and other carriers will insulate rural areas from competition); comments of TWC at 12-13 (Plan fosters a service competition redline around rural areas); Comments of Verizon at 13-16 (the Plan insulates mid-size and rural carriers from competition and harms rural and non-rural customers, and disincents rural carriers from investing in new and innovative technologies).

much as it is in more densely populated regions. The Commission should not artificially create additional barriers to competition where it has been thus far slow to take root and especially not at the expense of consumers across the nation.

Accordingly, even if the Restructure Mechanism was otherwise lawful – and it is *not* – its discriminatory nature requires rejection of this component of the Plan.[97]

2. The Edge Architecture Proposal Is a Further Source of Discriminatory Burden

As mentioned above, the Edge proposal in the Plan would undo years of State Commission and FCC decisions implementing the Act upon which ILECs and CLECs have relied in constructing interconnection, and thus network, architectures.[98] Separate and apart from the settled rights and obligations that would be altered, the Plan would impose a "need" for CLECs to engage in expensive regrooming of networks to accommodate ILEC designations of their Edges and changes in facilities. For example CLECs could be required to modify their central office equipment to accommodate collocation.[99] As Verizon notes, placing this burden on carriers would be totally unwarranted.[100] Moreover, riding the wave of the Edge rules would be additional regulations that require CLECs and other competitive providers to assume some of the costs of the interconnection transmission facilities used by ILECs to deliver their traffic to CLEC networks, contrary to unambiguous decisions made by the Commission in 1996 that carriers should recover their interconnection costs in a cost-causative manner and

97 *See also* discussion in Section IV.F., *infra.*

98 *See* Section II.C, *supra,* discussing record comments on this subject.

99 *See* Comments of COMPTEL at 10.

100 Comments of Verizon at 30-38.

thus that carriers using interconnection facilities provided by others are required to reimburse the provider in a manner proportionate to its relative use.[101]

Discrimination also exists in this area between Tracks. As Verizon, Qwest, and other commenters explain in detail, Track 3 carriers would be subsidized by Track 1 and 2 carriers by having the use of Track 1 and Track 2 interconnection transmission facilities without any compensation obligation.[102] The same sort of disparity occurs between Track 1 ILECs and non-ILEC Track 1 carriers where the latter choose to maintain their current interconnection arrangements or choose to assert their Section 251(c)(2) rights to interconnect at a technically feasible point other than an ILEC-designated Edge.[103]

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101 47 C.F.R. § 51.709(b); *Local Competition Order*, ¶¶ 1062-1063. *See also In the Matter of Petition of WorldCom, Inc. et al. Pursuant to Section 252(e) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, 17 FCC Rcd 27039 (2002) ("*Virginia Arbitration Order*") ¶67, n. 187 (explaining that LECs are obligated to bear the cost of delivering their originating traffic to interconnecting carriers pursuant to Commission Rules 51.703(b) and 51.709(b)).

102 *See* Comments of Verizon at 10-11; Comments of Time Warner *et al.* at 18-19 (CLECs have to pay for transport to and from the Edge of rural ILECs regardless of the actual point of interconnection and may, in contrast with today, now have to pay transport to multiple end office locations, increasing their costs); Comments of VZWireless at 13-14 (all Track 1 carriers would have extra transport burden vis-à-vis Tracks 2 and 3); Comments of Qwest at 13-18. Verizon also notes that Track 3 carriers would have more flexibility in designating their Edges than Track 1, making the Plan even more discriminatory. Comments of Verizon at 11-12.

103 *See* discussion in Section II.C, *supra.*

3. The Tandem Transit Rules Are a Further Source of Discrimination As Well As Network Inefficiency

The Commission, in the *Further* Notice in this proceeding, recognized that "[w]ithout the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks."[104] The major ILEC sponsor of the Plan, AT&T, made this very same point regarding network efficiency before the Wisconsin Public Service Commission contemporaneously with the Missoula Plan being finalized.[105] As an apparent nod to this need for efficiency, the Plan requires carriers currently providing tandem transit service to continue to do so. The Supporters recognize that tandem transit service is "essential" to indirect interconnection under Section 251(a) of two carriers where neither is an ILEC bound by Section 251(c).[106]

The Plan does not recognize a statutory obligation for ILECs to provide tandem transit service. Thus, the obligation imposed under the Plan would be solely regulatory. As the Joint CLEC Commenters explained, however, Section 251(c)(2) creates an obligation for ILECs to allow requesting carriers to interconnect and exchange

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104 *Further Notice,* ¶ 125.

105 AT&T Wisconsin's Comments on Staff Briefing Memorandum Before the Public Service Commission of Wisconsin, *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, 05-TI-1068, July 13, 2006 at 3.

106 Comments of the Supporters of the Missoula Plan at 19. *See also* TWC at 19 (efficacious interconnection among carriers demands tandem transit service be an obligation "even where a cable operator has extensive facilities-based coverage"); *cf.* Comments of Verizon Wireless at 5 ("[t]he fact that two telecommunications carriers might wish to fulfill their respective duties in different manners -- one through indirect connection, the other through direct connection -- does not give either carrier the right to impose its choice on the other").

traffic destined for termination by another LEC interconnected with the ILEC.[107] The record contains considerable support for this conclusion.[108]

The tandem transit rate proposal, which at the Plan's inception would be more than twice the rate that has typically been approved by State Commissions, also promotes network inefficiencies.[109] As the Joint CLEC Commenters and others have recognized, at certain volumes of traffic exchanged *indirectly* between carriers through a tandem transit arrangement, it *does* become more economically efficient to interconnect directly. This means, quite simply, that at smaller volumes of traffic, direct connection is uneconomic and inefficient. By arbitrarily and precipitously raising the rates for tandem transit service, the Plan skews the proper economic incentives and would force carriers to consider direct network interconnection when it is not cost-justified. As such, the Plan would impede one of the principal objectives of Congress in passing the 1996 Telecommunications Act: opening local, historically monopoly switched-telephone networks to competitors. That opening was not only for purposes of direct exchange between new networks and the legacy networks, but also to take advantage of the ubiquitous capabilities of the monopoly networks, including their unparalleled position as a facilitator of indirect interconnection.

The Missoula Plan would make the essential inefficient. The tandem transit provision of the Plan should be rejected. Rather, the Commission should clarify

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107 Joint CLEC Comments at 59-62.

108 Comments of TWC at 20-21; Comments of Cavalier at 14, 62-64; Comments of MOPSC at 51.

109 *See* Joint CLEC Comments at 64.

the obligations of ILECs to provide tandem transit service as a form of interconnection under Section 251(c)(2), pursuant to which they must charge TELRIC rates.

F. There is No Justification Under Section 201 for the Restructure Mechanism

In the Joint CLEC Commenters initial submission, the Restructure Mechanism was revealed as an impostor universal service mechanism which was, in any event, incompatible with Section 254.[110] Some of the Supporters agree that if support for the Restructure Mechanism is to be found, it is within Section 254.[111] As demonstrated in the Joint CLEC Commenters' initial comments, and echoed by numerous other parties, the RM should not be adopted as a new and burdensome universal service mechanism.[112] This is especially true where rural carriers and other ILECs that would receive payouts from the RM have been earning excessive returns.[113]

Sensing the problems that the RM may have as a universal service mechanism, the Supporters' comments include a curious set of Appendices. In particular, they offer alternative justifications, each presented as having the support of *only a subset* of the group of the Supporters. Obviously, there was internal disagreement on this subject. Indeed, it is also entirely possible that some of the group disagrees with *both*

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110 *Accord* Comments of Cavalier at 35-36.

111 Comments of the Supporters, Attachment 4.

112 Joint CLEC Comments at 72-74.

113 *See, e.g.,* Comments of TWC 23-24 (Rate-of-returns carriers have experienced excessive returns; the last thing the Commission should do is preserve revenue neutrality of such carriers, especially as costs (and thus revenues) have been falling otherwise). *See also* Comments of Ad Hoc Users Association at iii, 9 (discussing in detail the high rates of returns of the RBOCS – 19-33% based on ARMIS data –and the lack of knowledge regarding what rural ILECs are earning). Verizon characterizes rural ILEC access charges as "excessively high." Comments of Verizon at 7-10.

alternatives. This lack of consensus highlights the shaky legal basis for the Restructure Mechanism and underscores why the Restructure Mechanism is simply not a good idea.

Some advocates of the Plan believe the Commission should steer clear of the contention that the RM is a form of universal service and aver that the RM can be adopted as an interconnection compensation mechanism under Sections 201 (and 205).[114] As Ad Hoc notes, advocates of the Section 201 approach have not adequately distinguished between cost recovery and revenue neutrality, a necessary first step to make their case.[115] A promise of revenue neutrality to the ILECs would be a reversion to outdated revenue requirement type rate setting the Commission largely abandoned for most ILECs long-ago.[116] The sub-group of Supporters embracing the 201 approach contends nonetheless that, somehow, the RM is, in essence, a charge for the use of their facilities by interconnected carriers, whether connected directly or indirectly.[117] If this were the case, which is totally dubious, there are several fundamental problems. If the RM were intended to be compensatory for use of the facilities, the way other access charge elements are, then that means that the proposed intercarrier compensation rates must be inadequately compensatory. As the Joint CLEC Commenters' initial comments, as well as those of other parties, including some rural ILECs, demonstrated, the proposed call termination rates for Track 1 carriers are below cost. This simply exacerbates the

114 *See, e.g.,* Comments of TDS at 3.

115 Comments of Ad Hoc Users Association at 12.

116 *Id.* at 10. As the Ad Hoc Users Association notes further, and the Joint CLEC Commenters heartily agree, revenue neutrality, as a result, is flatly contradictory with the purported objectives of intercarrier compensation reform to promote competition and eliminate monopoly rents. *See id.* at 11.

117 Comments of TDS at 4-5.

basic unfairness of the RM's unavailability to CLECs, who are forced to charge the lowest rates in the Plan, whereas Track 2 and 3 carriers are able to charge much higher rates.[118] In other words, if the RM as an access charge mechanism is necessary for carriers to recover their costs of service, then the Plan would impermissibly deprive CLECs of that opportunity.

As it is, advocates of the argument that the RM is appropriate as a section 201 access charge mechanism have failed to demonstrate that their costs justify such a measure. This is not surprising because Track 3 carriers have to make almost no changes at all to their terminating rates. If the RM is not compensatory, but simply a means by which ILECs are able to retain a current level of revenues that are well above compensatory standards, then the RM is not properly an access charge element. It is simply a method to shift subsidies and keep the ILECs revenue neutral without any statutory, economic, or policy justification.[119]

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118 At least one commenting rural ILEC, TDS, recognizes openly the discrimination inherent in the restructure mechanism and calls for the inclusion of CLECs. Comments of TDS at 6-7. However, TDS simply seeks to alleviate the arbitrariness of the RM without specifying exactly how their inclusion would be accomplished. Including the CLECs and other non-ILECs would correct one ill associated with the RM, but would not address the additional strain on the universal service system that would occur even without the inclusion of the CLECs and other carriers.

119 It is also apparent from the initial comments of many would-be Track 3 carriers that another reason for characterizing the RM as an access charge mechanism under Section 201 rather than a universal service mechanism under Section 254 is the effort to prevent the RM benefits from being portable. *See, e.g.,* Comments of the Western Telecommunications Alliance at 6-7, *cf.* Comments of CTIA at 35-37.

V. THE COMMISSION SHOULD NOT MAKE INTERCONNECTION AGREEMENTS MANDATORY

The Supporters contend that the Commission has the authority to impose an obligation on carriers to enter into negotiations for interconnection terms, conditions, and compensation.[120] While acknowledging that the statute does not impose an obligation on CLECs to enter into such negotiations upon the request of an ILEC, the Supporters contend that the Commission has the statutory authority to issue regulations creating such an obligation. They argue that the adoption of such measures would be authorized by the Commission's general rulemaking authority and consistent with Section 252 of the Act. Notably, Section 252 applies only to the negotiations initiated by a non-ILEC with an ILEC, and so it is a mischaracterization to speak of consistency with Section 252. Section 252 on its face imposes an obligation solely on ILECs and on CLECs (or other carriers requesting interconnection) to negotiate in good faith *once the CLEC requests negotiations under Sections 251 and 252*. This differential treatment flows solely from the ILECs historical *de facto* or *de jure* monopolies. It would be counterintuitive and contrary to the intent of Congress if the Commission were to impose an entirely new regulatory scheme on competitive LECs and other non-ILEC providers.[121]

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120 Comments of the Supporters at 16-17.

121 *See, e.g., Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, filed Sep. 6, 2006; *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 F.C.C.R. 19,415 (Dec. 2, 2005), *appeal pending, Qwest Corp. v. FCC*, Case No. 05-1450 (D.C. Cir.) ("*Omaha Forbearance Order*").

Section 201 makes clear that, outside of the specific obligations created in Section 251, a carrier's obligations to interconnect can be required only after a Commission order following the opportunity for a hearing.[122] The Joint CLEC Commenters acknowledge that all LECs, including CLECs do have an obligation to enter into compensation arrangements for the exchange of traffic under Section 251(b). Accordingly, the Commission could conclude that it has certain authority to adopt narrow regulations concerning negotiation of Section 251(b) obligations, namely agreements to cover the exchange of traffic (through indirect or direct interconnection, as the parties agree) and intercarrier compensation from another carrier. The Joint CLEC Commenters, therefore, could accept a properly tailored regulation requiring CLECs and other LECs to enter into negotiations to effectuate those Section 251(b) obligations, but only upon their own initiative or upon request of another LEC with whom they exchange traffic, either directly or indirectly.[123] The Commission should not mandate agreements unless one or both parties want a formal agreement.[124] If that LEC is a rural ILEC that, heretofore, has claimed an exemption from Section 251(b) or (c) under Section 251(f), the Joint CLEC Commenters submit that should such an ILEC request negotiations with a CLEC for an intercarrier compensation arrangement which covers the exchange of traffic, the

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122 47 U.S.C. § 201(a). Verizon notes that only ILECs have an obligation to interconnect directly under Section 252. Comments of Verizon at 33.

123 Indeed, in their separate comments on the Plan's interim "phantom traffic" proposal, the Joint CLEC Commenters set forth a possible framework for negotiated agreements for the exchange of traffic *where one of the exchanging parties requested negotiations*. Comments of the Joint CLEC Commenters on the Phantom Traffic Proposal at 17-19. Such a framework would require an ILEC requesting negotiations of a CLEC to assume relevant Section 251(b) obligations. *Cf.* Comments of the Supporters of the Missoula Plan at 16 (advocating for giving the ILECs the right to commence negotiations).

124 Joint CLEC Comments on the Phantom Traffic Proposal at 17-19.

exemption should be lifted consistent with the scope of the interconnection request.[125] This requirement is necessary to level the playing field.

One other point bears repeating. While the Joint CLEC Commenters are willing to see the Commission require CLECs to submit to negotiations if they receive a request, as outlined above, the Commission should not create any additional obligations on the part of CLECs that exist today. In other words, upon receiving a request for negotiation, for example from a Track 3 carrier, a CLEC would have no greater obligations regarding the arrangements to be entered into than it would have had were it the party to request negotiations. There would, for example, be no direct interconnection obligation, although a non-ILEC may voluntarily agree to such direct interconnection if it made sense from an economic and network efficiency perspective. Anything more would stand the framework established by Congress unacceptably on its head.

VI. THE UNIQUE CHALLENGES OF THE RURAL ILECS SHOULD BE ADDRESSED SEPARATELY

In their initial comments, the Joint CLEC Commenters advocated that addressing the needs of the Rural ILECs required a separate proceeding, consistent with past Commission practice in its access charge reform proceedings. The initial comments underscore this reality and need. As TDS Telecommunications makes clear, the rural carriers have a unique set of challenges.[126] The initial comments are rife with the comments of rural ILECs that present a different set of concerns than expressed by Track 1 carriers, an emphasis on the need for the Restructure Mechanism as a precursor to any intercarrier combination reform, concerns about phantom traffic and wireless carriers'

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125 *Id.* at 19.

126 Comments of TDS at 3.

enjoyment of the intraMTA rule, and advocacy of rules that force interconnecting carriers to pick up a disproportionate share of transport costs. Moreover, Track 3 carriers, under the Plan, would experience, potentially, the smallest reductions in intercarrier compensation rates such that the economic distortion they experience would be smaller than for other carriers.[127] It is clear that the issues of importance to the rural ILECs are largely different from the concerns of Track 1 carriers, both ILEC and non-ILEC, and that it hardly makes sense to consider these issues in the same proceeding as the Commission takes steps to reform intercarrier compensation among larger ILECs and competitive carriers.

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127 *See* Comments of Ad Hoc Users Association at 15-16. Verizon notes that the Plan would exacerbate the differences between carrier access rates in the different tracks, in large part because Track 3 carriers are asked to make minimal reductions or even increase their rates. Comments of Verizon at 8-9.

CONCLUSION

For the foregoing reasons and those contained in the Joint CLEC Commenters' initial comments, the Plan should be rejected. Instead, the Commission should proceed to address "phantom traffic" concerns by strengthening and clarifying the call signaling rules and dictating the primacy of intercarrier contracts to address how so-called "phantom traffic" will be treated. Further, the Commission should decide the manner in which VoIP-PSTN traffic will be handled *prospectively.*

Respectfully submitted,

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